

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

---

USCA Docket Number:

USDC Docket Number : 04-cv-12606

Scott L. Baena, et al

v.

KPMG LLP, et al

---

**CLERK'S CERTIFICATE**

I, Sarah A Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents as indicated on the certified copy of the docket and contained in Volume(s) I are the original pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 10/6/05.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on December 13, 2005.

Sarah A. Thornton, Clerk of Court

By: 

Jeanette Ramos, Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 12/13/05

  
Deputy Clerk, US Court of Appeals

---

Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: \_\_\_\_\_

APPEAL

**United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:04-cv-12606-PBS**

Baena v. KPMG LLP et al  
Assigned to: Judge Patti B. Saris  
Demand: \$340,000  
Cause: 11:101 Bankruptcy

Date Filed: 12/01/2004  
Jury Demand: None  
Nature of Suit: 423 Bankruptcy  
Withdrawal  
Jurisdiction: Federal Question

**Plaintiff**

**Scott L. Baena**  
*Litigation Trustee of the Lernout &  
Hauspie Speech Products, N.V.  
Litigation Trust*

represented by **David R. Hazouri**  
Bilzin Sumberg Baena Price & Axelrod  
LLP  
Suite 2500  
200 South Biscayne Boulevard  
Miami, FL 33131  
305-350-2360  
Fax: 305-351-2225  
Email: dhazouri@bilzin.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**David W. Trench**  
Bilzin Sumberg Baena Price & Axelrod  
LLP  
Suite 2500  
200 South Biscayne Boulevard  
Miami, FL 33131  
305-350-2359  
Fax: 305-351-2261  
Email: dtrench@bilzin.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Joel G. Beckman**  
Nystrom Beckman & Paris LLP  
10 St. James Avenue  
16th Floor  
Boston, MA 02116  
617-778-9100  
Fax: 617-778-9110  
Email: jbeckman@nbparis.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Lisa L. Coggins**

Ferry, Joseph, Pearce, P.A.  
824 Market Street  
Suite 904  
Wilmington, DE 19801  
302-575-1555  
Fax: 302-575-1714  
Email: lcoggins@ferryjoseph.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Robert W. Turken**  
Bilzin Sumberg Baena Price & Axelrod  
LLP  
Suite 2500  
200 South Biscayne Boulevard  
Miami, FL 33131  
305-350-2381  
Fax: 303-351-2262  
Email: rturken@bilzin.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Scott G. Klein**  
Bilzin Sumberg Baena Price & Axelrod  
LLP  
200 South Biscayne Blvd.  
Suite 2500  
Miami, FL 33131  
305-375-6147  
Fax: 305-351-2283  
Email: sklein@bilzin.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Theodore J. Tacconelli**  
Ferry & Joseph, P.A.  
824 Market Street  
Suite 904, DE 19899  
302-575-1555  
Fax: 302-575-1714  
Email: ttacconelli@ferryjoseph.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**William C. Nystrom**  
Nystrom Beckman & Paris LLP  
10 St. James Avenue  
16th Floor  
Boston, MA 02116  
617-778-9100

Fax: 617-421-1810  
Email: wnystrom@nbparis.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**KPMG LLP**

represented by **Brett Fallon**  
Morris, James, Hitchens & Williams  
222 Delaware Avenue  
10th Floor  
Wilmington, DE 19801  
302-888-6888  
Fax: 302-571-1750  
Email: bfallon@morrisjames.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Diem-Suong T. Nguyen**  
Davis Polk & Wardwell  
1600 El Camino Real  
Menlo Park, CA 94025  
Email: nguyen@dpw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Douglas N. Candeub**  
Morris, James, Hitchens & Williams  
LLP  
222 Delaware Avenue  
10th Floor  
Wilmington, DE 19801  
302-888-6854  
Fax: 302-571-1750  
Email: dcandeub@morrisjames.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Julian J. Moore**  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017  
212-450-4776  
Fax: 212-450-3776  
Email: julian.moore@dpw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Kevin J. Lesinski**

Seyfarth Shaw, LLP  
World Trade Center East  
Two Seaport Lane  
Suite 300  
Boston, MA 02210  
617-946-4801  
Fax: 617-946-4801  
Email: klesinski@seyfarth.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Michael P. Carroll**  
Davis, Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017  
212-450-4547  
Fax: 212-450-4800  
Email: michael.carroll@dpw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Michael S. Flynn**  
Davis Polk & Warwell  
450 Lexington Avenue  
New York, NY 10017  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Sean C. Knowles**  
Davis, Polk & Wardwell  
450 Lexington Ave  
New York, NY 10017  
212-450-4166  
Email: knowles@dpw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Kristin G. McGurn**  
Seyfarth Shaw, LLP  
Two Seaport Lane, Ste. 300  
Boston, MA 02210-2028  
617-946-4800  
Fax: 617-946-4801  
Email: kmcgurn@seyfarth.com  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Klynveld Peat Marwick Goerdeler  
Bedrijfsrevisoren**

represented by **Michael J. Stone**  
Peabody & Arnold LLP  
30 Rowes Wharf

Boston, MA 02110  
617-951-2100  
Email: mstone@peabodyarnold.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**George A. Salter**  
Hogan & Hartson, LLP  
875 Third Avenue  
New York, NY 10022  
212-918-3000  
Fax: 212-918-3100  
Email: gasalter@hhlaw.com  
**ATTORNEY TO BE NOTICED**

**Nicholas W.C. Corson**  
Hogan & Hartson, LLP  
875 Third Avenue  
New York, NY 10022  
212-918-3000  
Fax: 212-918-3100  
Email: ncorson@hhlaw.com  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
12/01/2004	<u>34</u>	Case transferred in from District of Delaware; Case Number 04-54842-JHW. Original file with documents numbered 1-33, certified copy of transfer order and docket sheet received. (Attachments: # <u>1</u> Original Docket Sheet - ECF Version) (Patch, Christine) (Entered: 12/16/2004)
12/01/2004		If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Alexander. (Patch, Christine) (Entered: 12/16/2004)
12/21/2004	<u>35</u>	NOTICE of Appearance by William C. Nystrom, Joel G. Beckman on behalf of Scott L. Baena (Patch, Christine) (Entered: 12/28/2004)
12/22/2004	<u>36</u>	NOTICE of Scheduling Conference Scheduling Conference set for 2/2/2005 02:00 PM in Courtroom 19 before Judge Patti B. Saris. (Patch, Christine) (Entered: 12/29/2004)
12/23/2004	<u>37</u>	MOTION for Leave to Appear Pro Hac Vice by David W. Trench, Robert W. Turken, David R. Hazouri, and Scott G. Klein Filing fee \$ 200, receipt number 61050. by Scott L. Baena. (Attachments: # <u>1</u> Certificate of David Trench# <u>2</u> Certificate of Robert Turken# <u>3</u> Certificate of David Hazouri# <u>4</u> Certificate of Scott Klein)(Patch, Christine) (Entered: 01/04/2005)
01/04/2005		Judge Patti B. Saris : ElectronicORDER entered granting <u>37</u> Motion for Leave to Appear Pro Hac Vice Added David W. Trench for Scott L.



		Baena, Robert W. Turken for Scott L. Baena, David R. Hazouri for Scott L. Baena, Scott G. Klein for Scott L. Baena (Patch, Christine) (Entered: 01/04/2005)
01/07/2005	<u>38</u>	MOTION to Dismiss <i>Complaint</i> by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren.(Corson, Nicholas) (Entered: 01/07/2005)
01/07/2005	<u>39</u>	MEMORANDUM in Support re <u>38</u> MOTION to Dismiss <i>Complaint</i> filed by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren. (Corson, Nicholas) (Entered: 01/07/2005)
01/07/2005	<u>40</u>	DECLARATION re <u>39</u> Memorandum in Support of Motion to Dismiss - <i>Michel Desai</i> ve - by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren. (Corson, Nicholas) (Entered: 01/07/2005)
01/07/2005	<u>41</u>	MOTION to Dismiss by KPMG LLP.(McGurn, Kristin) (Entered: 01/07/2005)
01/07/2005	<u>42</u>	MEMORANDUM in Support re <u>41</u> MOTION to Dismiss filed by KPMG LLP. (McGurn, Kristin) (Entered: 01/07/2005)
01/07/2005	<u>43</u>	DECLARATION re <u>38</u> MOTION to Dismiss <i>Complaint of Nicholas Corson</i> by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D) (Corson, Nicholas) (Entered: 01/07/2005)
01/07/2005	<u>44</u>	MOTION for Leave to File <i>Brief in Excess of Twenty Pages</i> by KPMG LLP.(McGurn, Kristin) (Entered: 01/07/2005)
01/07/2005	<u>45</u>	DECLARATION of <i>Kristin G. McGurn in Support of Motion to Dismiss the Complaint</i> by KPMG LLP. (Attachments: # <u>1</u> Exhibit A and B to Declaration# <u>2</u> Exhibit C to Declaration part 1# <u>3</u> Exhibit C to Declaration part 2# <u>4</u> Exhibit C to Declaration part 3# <u>5</u> Exhibit C to Declaration part 4# <u>6</u> Exhibit C to Declaration part 5# <u>7</u> Exhibit C to Declaration part 6# <u>8</u> Exhibit C to Declaration part 7# <u>9</u> Exhibit D to Declaration# <u>10</u> Exhibit E to Declaration part 1# <u>11</u> Exhibit E to Declaration part 2# <u>12</u> Exhibit F and G to Declaration)(McGurn, Kristin) (Entered: 01/07/2005)
01/07/2005	<u>46</u>	NOTICE of Appearance by Michael J. Stone on behalf of Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren (Patch, Christine) (Entered: 01/18/2005)
01/07/2005	<u>47</u>	MOTION for Leave to Appear Pro Hac Vice by George A. Saltar and Nicholas W.C. Corson Filing fee \$ 100, receipt number 61304. by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren. (Attachments: # <u>1</u> Exhibit Affidavit of George A. Saltar# <u>2</u> Exhibit Affidavit of Nicholas W.C. Corson)(Patch, Christine) (Entered: 01/18/2005)
01/10/2005		Judge Patti B. Saris : ElectronicORDER entered granting <u>44</u> Motion for Leave to File Brief a Memorandum in Excess of 20 Pages. (Patch, Christine) (Entered: 01/19/2005)
01/10/2005	<u>48</u>	Judge Patti B. Saris : ORDER entered. "The Court orders that Electronic

		Case Filing is mandatory in this action as of February 1, 2005." (Patch, Christine) (Entered: 01/20/2005)
01/10/2005	<u>49</u>	NOTICE of Hearing on Motion <u>38</u> MOTION to Dismiss <i>Complaint</i> , <u>41</u> MOTION to Dismiss: Motion Hearing set for 2/2/2005 02:00 PM in Courtroom 19 before Judge Patti B. Saris. (Patch, Christine) (Entered: 01/20/2005)
01/18/2005		Judge Patti B. Saris : ElectronicORDER entered granting <u>47</u> Motion for Leave to Appear Pro Hac Vice Added George A. Saltar and Nicholas W.C. Corson for Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren (Patch, Christine) (Entered: 01/18/2005)
01/21/2005	<u>50</u>	MOTION To Extend Response Deadline and Reschedule Hearing re <u>49</u> Notice of Hearing on Motion, <u>38</u> MOTION to Dismiss <i>Complaint</i> , <u>39</u> Memorandum in Support of Motion, <u>41</u> MOTION to Dismiss, <u>42</u> Memorandum in Support of Motion by Scott L. Baena.(Beckman, Joel) (Entered: 01/21/2005)
01/24/2005		Judge Patti B. Saris: ElectronicORDER entered allowing <u>50</u> Motion To Extend Response Deadline and Reschedule Hearing on Motion to Dismiss and Scheduling Conference. "ALLOWED. RESPONSE DUE BY FEBRUARY 11, 2005. THE MOTION HEARING AND SCHEDULING CONFERENCE IS CONTINUED TO MARCH 4, 2005, AT 3:00 P.M." (Alba, Robert) (Entered: 01/24/2005)
01/24/2005	<u>51</u>	RESPONSE to Motion re <u>50</u> MOTION To Extend Response Deadline and Reschedule Hearing re <u>49</u> Notice of Hearing on Motion, <u>38</u> MOTION to Dismiss <i>Complaint</i> , <u>39</u> Memorandum in Support of Motion, <u>41</u> MOTION to Dismiss, <u>42</u> Memorandum in Support of Motion filed by KPMG LLP. (McGurn, Kristin) (Entered: 01/24/2005)
01/25/2005	<u>52</u>	NOTICE of Appearance by Kristin G. McGurn on behalf of KPMG LLP (McGurn, Kristin) (Entered: 01/25/2005)
01/25/2005	<u>53</u>	MOTION for Leave to Appear Pro Hac Vice by Michael P. Carroll, Diem-Suong T. Nguyen, Michael S. Flynn, Sean C. Knowles and Julian J. Moore by KPMG LLP. (Attachments: # <u>1</u> Certificates in Support of Admission Pro Hac Vice)(McGurn, Kristin) (Entered: 01/25/2005)
01/25/2005		Filing fee: \$ 250.00, receipt number 61711 regarding Motion for Leave to Appear Pro Hac Vice by Michael P. Carroll, Diem-Suong T. Nguyen, Michael S. Flynn, Sean C. Knowles and Julian J. Moore (Patch, Christine) (Entered: 02/08/2005)
02/08/2005		Judge Patti B. Saris : Electronic ORDER entered granting <u>53</u> Motion for Leave to Appear Pro Hac Vice Added Michael P. Carroll for KPMG LLP, Diem-Suong T. Nguyen for KPMG LLP, Michael S. Flynn for KPMG LLP, Sean C. Knowles for KPMG LLP, Julian J. Moore for KPMG LLP (Patch, Christine) (Entered: 02/08/2005)
02/11/2005	<u>54</u>	AFFIDAVIT of David Trench in support of Plaintiff's Opposition to KPMG Belgium's Motion to Dismiss the Complaint in Opposition re <u>38</u>



		MOTION to Dismiss <i>Complaint</i> filed by Scott L. Baena. (Beckman, Joel) (Entered: 02/11/2005)
02/11/2005	<a href="#">55</a>	MEMORANDUM in Opposition re <a href="#">38</a> MOTION to Dismiss <i>Complaint</i> filed by Scott L. Baena. (Beckman, Joel) (Entered: 02/11/2005)
02/11/2005	<a href="#">56</a>	Assented to MOTION for Leave to File Excess Pages by Scott L. Baena. (Beckman, Joel) (Entered: 02/11/2005)
02/11/2005	<a href="#">57</a>	MEMORANDUM in Opposition re <a href="#">41</a> MOTION to Dismiss filed by Scott L. Baena. (Beckman, Joel) (Entered: 02/11/2005)
02/14/2005	<a href="#">58</a>	AFFIDAVIT of David W. Trench in Opposition re <a href="#">41</a> MOTION to Dismiss filed by Scott L. Baena. (Beckman, Joel) (Entered: 02/14/2005)
02/25/2005	<a href="#">59</a>	JOINT STATEMENT re scheduling conference <i>Pursuant to Local Rule 16.1</i> . (Beckman, Joel) (Entered: 02/25/2005)
02/25/2005	<a href="#">60</a>	STATEMENT OF COUNSEL of Joel G. Beckman <i>Certification Pursuant to Local Rule 16.1(D)(3)</i> by Scott L. Baena. (Beckman, Joel) (Entered: 02/25/2005)
02/25/2005	<a href="#">61</a>	MOTION for Leave to File <i>Reply Memorandum of Law</i> by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren.(Corson, Nicholas) (Entered: 02/25/2005)
02/25/2005	<a href="#">62</a>	REPLY to Response to Motion re <a href="#">38</a> MOTION to Dismiss <i>Complaint</i> filed by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren. (Corson, Nicholas) (Entered: 02/25/2005)
02/25/2005	<a href="#">63</a>	DECLARATION of <i>Nicholas W.C. Corson in Support of Reply Memorandum of Law</i> by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren. (Corson, Nicholas) (Entered: 02/25/2005)
02/25/2005	<a href="#">64</a>	MOTION for Leave to File <i>Reply</i> by KPMG LLP.(McGurn, Kristin) (Entered: 02/25/2005)
02/25/2005	<a href="#">65</a>	REPLY to Response to Motion re <a href="#">41</a> MOTION to Dismiss filed by KPMG LLP. (McGurn, Kristin) (Entered: 02/25/2005)
02/25/2005	<a href="#">66</a>	CERTIFICATION pursuant to Local Rule 16.1 by Scott L. Baena. Re-entered by court staff to correct data entry error. (Patch, Christine) (Entered: 03/01/2005)
02/28/2005	<a href="#">61</a>	Judge Patti B. Saris: Electronic ORDER entered granting <a href="#">61</a> Assented to MOTION for Leave to File Reply Memorandum of Law by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren. (Alba, Robert) (Entered: 02/28/2005)
02/28/2005	<a href="#">64</a>	Judge Patti B. Saris: Electronic ORDER entered granting <a href="#">64</a> Unopposed MOTION for Leave to File Reply by KPMG LLP. (Alba, Robert) (Entered: 02/28/2005)
03/01/2005	<a href="#">60</a>	Documents terminated: <a href="#">60</a> Statement of counsel filed by Scott L. Baena., (Patch, Christine) (Entered: 03/01/2005)

03/01/2005	●	Notice of correction to docket made by Court staff. Correction: Document No. 60 terminated because it was filed using the wrong event. Please refer to Document No. 66 for corrected filing (Patch, Christine) (Entered: 03/01/2005)
03/02/2005	●67	NOTICE OF RESCHEDULING The Motion Hearing re: Motion to Dismiss and Scheduling Conference previously set for 3/4/05 has been rescheduled to 3/25/2005 04:00 PM in Courtroom 19 before Judge Patti B. Saris. (Patch, Christine) (Entered: 03/02/2005)
03/08/2005	●68	CERTIFICATION pursuant to Local Rule 16.1 by KPMG LLP. (McGurn, Kristin) (Entered: 03/08/2005)
03/24/2005	●69	CERTIFICATION pursuant to Local Rule 16.1 by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren.(Corson, Nicholas) (Entered: 03/24/2005)
03/25/2005	●	Electronic Clerk's Notes for proceedings held before Judge Patti B. Saris: Motion Hearing held on 3/25/2005 re <u>38</u> MOTION to Dismiss <i>Complaint</i> filed by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren,, <u>41</u> MOTION to Dismiss filed by KPMG LLP. Court hears argument of counsel. Court takes motion under advisement. Court sets limited discovery. (Court Reporter Cheryl Dahlstrom.) (Alba, Robert) (Entered: 03/25/2005)
05/03/2005	●70	TRANSCRIPT of Motion Hearing held on March 25, 2005 before Judge Saris. Court Reporter: Cheryl Dahlstrom. The original transcripts are maintained in the case file in the Clerk's Office. Copies may be obtained by contacting the court reporter at 617/951-4555 or the Clerk's Office. (Scalfani, Deborah) (Entered: 05/03/2005)
05/19/2005	●71	MOTION for Leave to File ( <i>KPMG LLP's Unopposed Motion For Leave To Submit Additional Authority In Further Support Of Its Motion To Dismiss</i> ) by KPMG LLP.(Lesinski, Kevin) (Entered: 05/19/2005)
06/02/2005	●72	RESPONSE to Motion re <u>71</u> MOTION for Leave to File ( <i>KPMG LLP's Unopposed Motion For Leave To Submit Additional Authority In Further Support Of Its Motion To Dismiss</i> ) filed by Scott L. Baena. (Zakarian, Dana) (Entered: 06/02/2005)
06/08/2005	●	Motions terminated from Court's Statistical Report: <u>56</u> Assented to MOTION for Leave to File Excess Pages filed by Scott L. Baena. (issue addressed by prior Court action.) (Alba, Robert) (Entered: 06/08/2005)
06/15/2005	●73	MOTION for Leave to File ( <i>KPMG LLP's Motion For Leave To Respond To Plaintiff's Submission Regarding Additional Authority</i> ) by KPMG LLP. (Attachments: # <u>1</u> Exhibit A)(McGurn, Kristin) (Entered: 06/15/2005)
09/27/2005	●74	Judge Patti B. Saris : ORDER entered. MEMORANDUM AND ORDER, granting <u>38</u> MOTION to Dismiss <i>Complaint</i> filed by Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren,, <u>41</u> MOTION to Dismiss filed by KPMG LLP,.(Patch, Christine) (Entered: 09/28/2005)

09/27/2005	●	Civil Case Terminated. (Patch, Christine) (Entered: 09/28/2005)
10/06/2005	● 75	NOTICE OF APPEAL as to 74 Memorandum & ORDER, Terminate Motions by Scott L. Baena. \$ 255 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerks/transcript.htm">http://www.ca1.uscourts.gov/clerks/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 10/26/2005. (Zakarian, Dana) (Entered: 10/06/2005)
10/11/2005	●	Filing fee: \$ 255.00, receipt number 67355 regarding Notice of Appeal (Patch, Christine) (Entered: 10/13/2005)